

**TITLE 16**  
**BUREAU OF AUTOMOTIVE REPAIR**

**NOTICE OF PROPOSED REGULATORY ACTION AND PUBLIC  
HEARING CONCERNING**

**Administrative Citations and Fines for Unlicensed Activity**  
SPECIFICALLY

**Authority to Issue Citations and Fines for Unlicensed Practice; Citation Format; Citations  
for Unlicensed Practice; Amount of Fines for Unlicensed Practice; Compliance with  
Citation/Order of Abatement; Contested Citations and Requests for a Hearings or  
Informal Citation Conference; Disconnection of Telephone Service**

**NOTICE IS HEREBY GIVEN** that the Department of Consumer Affairs/Bureau of Automotive Repair (Bureau or BAR) is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at hearings to be held at the following locations on the following dates:

**NORTHERN CALIFORNIA**  
Tuesday, July 5, 2011 at 2:00pm  
Department of Consumer Affairs  
Hearing Room  
1625 North Market Blvd., S-102  
Sacramento, CA 95834

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be **received** by the Bureau at its office no later than **5:00 p.m. on Tuesday, July 5, 2011**, or must be received by the Bureau at the above referenced hearing. **Comments sent to persons or addresses other than those specified under Contact Person, or received after the date and time specified above, regardless of the manner of transmission, will be included in the record of this proposed regulatory action, but will not be summarized or responded to.** The Bureau, upon its own motion or at the request of any interested party, may thereafter formally adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit oral or written testimony related to this proposal or who have requested notification of any changes to the proposal.

## **AUTHORITY AND REFERENCE:**

Pursuant to the authority vested by §9882 of the Business and Professions Code (B&P), to implement, interpret or make specific §125.9, 148, 149, 302(d) of B&P, the Bureau is proposing to adopt Article 11.2 of Chapter 1, Division 33, Title 16, to the California Code of Regulations.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### **INTRODUCTION:**

The Bureau of Automotive Repair (BAR) was established within the California Department of Consumer Affairs (DCA) in 1972 with the enactment of the Automotive Repair Act<sup>1</sup>. BAR was created by Senate Bill (SB) 51 (Beilenson, Chapter 1578, Statute 971), which mandated a statewide automotive repair consumer protection program. In furtherance of its mandate, BAR administers a statewide licensing and enforcement program.

### **BACKGROUND:**

Through its statewide offices, BAR conducts consumer protection services related to Title 16, Division 33, of the California Code of Regulations. BAR regulates Automotive Repair Dealers, Lamp and Brake stations and adjusters, and Smog Check stations and technicians. BAR receives and mediates complaints from the public, investigates violations of the Automotive Repair Act, Smog Check laws, and associated regulations. When appropriate, cases are referred to the Attorney General's office or law enforcement authorities for administrative action, civil and/or criminal prosecution.

Legislation provided BAR the authority to adopt regulations to issue administrative citations and fines for unlicensed activity pursuant to Business and Professions Code (B&P) Section 125.9. SB 362 (Figueroa, Chapter 788, Statutes of 2003) increased the maximum citation amount from \$2,500 to \$5,000. Violators operating without a valid license or registration may be issued a citation pursuant to B&P 148. This proposed regulation would allow BAR to fine a person or entity with an expired license or an unlicensed person acting in the capacity of a licensee or registrant, up to \$5,000. The amount of the fine shall be based on the following:

1. The nature, gravity, severity, and seriousness of the violation.
2. The persistence of the violation.
3. The good faith or willfulness of the violator to cooperate with the bureau.
4. The history of previous violations by that violator, including the commission of numerous and repeated violations.
5. The failure to perform work for which money was received.
6. The making of any false or misleading statement in order to induce a person to authorize repair work or pay money.
7. The failure to make restitution to consumers affected by the violation.
8. The extent to which the violator has mitigated or attempted to mitigate any damage or injury caused by the violation.

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<sup>1</sup> Business and Professions Code § 9880, et seq.

9. The degree of incompetence or negligence in the performance of duties and responsibilities.
10. The purposes and goals of this chapter and other matters as may be appropriate.

Adopting regulations to utilize the authority pursuant to B&P 148 will assist the BAR in enforcing and reducing the amount of unlicensed activity in California.

**CURRENT REGULATION:**

No regulations exist for Administrative Citations and Fines for Unlicensed Activity.

**EFFECT OF REGULATORY ACTION:**

BAR is proposing to adopt the following regulations:

- I. **Article 11.2 Administrative Citations and Fines for Unlicensed Activity, Chapter 1, Division 33, Title 16, California Code of Regulations:** Article 11.2 will be created to contain regulations specific to administrative citations and fines for unlicensed activity.
- II. **Authority to Issue Citations and Fines for Unlicensed Practice:** This section provides BAR the ability to issue and administer citations to an unlicensed person or entity acting in the capacity of a licensee or registrant. The BAR chief has the ability to appoint a designee to determine when and against whom a citation will be issued. (§3394.40)
- III. **Citation Format:** Citations must be in written form and describe the nature and facts for each violation. In addition, the citation shall inform the cited person of his/her right to contest the citation. BAR must serve the citation in person or by certified mail pursuant to §11505 (c) of the Government Code. (§3394.41)
- IV. **Citations for Unlicensed Practice:** The BAR chief or his/her designee shall issue citations containing orders of abatement against any person or entity who is performing or who has performed any services for which a license or registration is required. When a citation is issued it must include an order of abatement and may include a fine. Citations issued pursuant to Article 11.2 Administrative Citations and Fines for Unlicensed Activity shall be separate from and in addition to any other civil or criminal actions. (§3394.42)
- V. **Amount of Fines for Unlicensed Practice:** If the BAR chooses to cite a licensee or registrant with an expired license, it shall first issue an order of abatement without a fine to a person or entity with an expired license. The order of abatement will notify the licensee to immediately cease all work and/or any work in progress that requires a valid license or registration. The order of abatement will fix 30 days to pay the license renewal and any delinquency and other fees, after which time the BAR may issue a fine of up to \$5,000. Furthermore, if an

expired licensee continues to operate without a valid license or registration BAR may issue a citation, fine, and/or take other disciplinary action.

BAR may issue administrative citations and fines to any unlicensed person or entity acting in the capacity of a licensee or registrant up to \$5,000. (§3394.43)

- VI. **Compliance with Citation/Order of Abatement:** If the cited person who has been issued an order of abatement cannot complete the correction within the time set in the citation, due to uncontrollable factors and after reasonable diligence, the cited person may request an extension from BAR. The request for an extension must be in writing and within the time set in the citation. If a citation is not contested, or the citation is contested and the cited person does not prevail, failure to correct the violation or pay the fine will be considered a failure to comply with the citation. If a fine is not paid it will be added to the cited person's license or registration renewal fee. Licenses and registrations will not be renewed without the payment of the renewal fee and fine. This section does not give permission to continue operation without a valid license or registration. (§3394.44)
- VII. **Contested Citations and Request for a Hearing or Informal Citation Conference:** When a citation is contested, the cited person may submit a written request for an administrative hearing or informal citation conference within 10 days after service of the citation. When a request for an informal citation conference is made BAR must hold the conference within 60 days after the receipt of the request. If an informal citation conference is held, the request for an administrative hearing is deemed withdrawn. If the citation is upheld or modified due to the conference, the original citation is withdrawn and a modified citation will be mailed out within 15 days of the informal citation conference. If the cited person wishes to contest the upheld or modified citation a written request for an administrative hearing must be made within 30 days. (§3394.45)
- VIII. **Disconnection of Telephone Service:** BAR may seek the disconnection of telephone service of any unlicensed or unregistered person or entity acting in the capacity of a licensee or registrant. (§3394.46)

#### **FISCAL IMPACT ON PUBLIC AGENCIES INCLUDING COSTS OR SAVINGS TO STATE AGENCIES AND COSTS/SAVINGS IN FEDERAL FUNDING TO THE STATE:**

BAR will incur minor expenses due to some cited individuals and businesses requesting an Administrative Hearing with an Office of Administrative Hearings and costs associated with the Attorney General providing legal service.

As a result, BAR estimates cost in the first full year of the regulation of \$294,785. This amount is project to decrease to \$195,489 in the second year and \$77,575 in the third year and ongoing.

These costs will be fully absorbed due to the collection of fines associated with this regulation.

There are no costs/savings in federal funding to the state.

**NONDISCRETIONARY COSTS/SAVINGS TO LOCAL AGENCIES:**

None.

**LOCAL MANDATE:**

None.

**COSTS TO ANY LOCAL AGENCY OR SCHOOL DISTRICT FOR WHICH  
GOVERNMENT CODE SECTIONS 17500-17630 REQUIRES REIMBURSEMENT:**

None.

**BUSINESS IMPACT:**

BAR has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Benefits cannot be expressed in monetary terms, for instance these regulations will strengthen the BAR's ability to enforce its laws and regulations and provide consumers additional protection. In the first full year of the regulation BAR expects to issue 1,500<sup>2</sup> citations at an average cost of \$450 resulting in up to \$675,000 in fines. This number is projected to decrease as the industry becomes aware of the fine authority and BAR's ability to use these provisions to fine an unlicensed person or entity. In the second year of the regulation BAR will issue approximately 1,000 citations resulting in approximately \$450,000 in fines. BAR has projected it will issue 400 citations in the third year and ongoing, resulting in approximately \$180,000 in fines annually. Over the lifetime of this proposed regulation BAR will collect an estimated \$2,565,000 in fines from enforcing the statutes of B&P 148.

**IMPACT ON JOBS/NEW BUSINESSES:**

BAR has made an initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses, the elimination of jobs or existing businesses, or the expansion of businesses in the State of California.

**COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:**

The proposed regulation will not have an adverse economic impact on businesses or private persons. The proposed regulation will only affect businesses and persons that are operating without a valid license or registration. A fine of up to \$5,000 may be imposed for violations of

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<sup>2</sup> BAR estimates the number of unlicensed businesses and individuals based on complaints received from 1/1/2009 to 12/31/2009, sorted by complaints against unlicensed shops.

B&P 148. In order to comply with this regulation a person or entity simply needs to become licensed or registered with BAR.

**EFFECT ON HOUSING COSTS:**

None.

**EFFECT ON SMALL BUSINESS:**

BAR has determined that the proposed regulations would not affect small businesses. Requirements in this proposed regulation are minor and compliance can be achieved by simply becoming licensed with BAR. Requiring businesses and individuals to become licensed is not a new requirement and is already enforced by BAR.

**CONSIDERATION OF ALTERNATIVES**

BAR must determine that no reasonable alternative, which it considered or that has otherwise been identified and brought to its attention, would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

**INITIAL STATEMENT OF REASONS AND INFORMATION**

BAR has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

**TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau of Automotive Repair at 10240 Systems Parkway, Sacramento, California, 95827.

**AVAILABILITY OF THE RULEMAKING FILE AND THE FINAL STATEMENT OF REASONS**

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the persons named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

## **CONTACT PERSON**

Inquiries or comments concerning the proposed administrative action may be addressed to:

*Steven Hall  
Bureau of Automotive Repair  
10240 Systems Parkway  
Sacramento, CA 95827  
Telephone: (916) 255-2135  
Fax No.: (916) 255-1369  
E-mail: [steven.hall@dca.ca.gov](mailto:steven.hall@dca.ca.gov)*

The backup contact person is:

*Tracy Brazil  
Bureau of Automotive Repair  
10240 Systems Parkway  
Sacramento, CA 95827  
Telephone: (916) 255-2279  
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## **WEB SITE ACCESS**

Materials regarding this proposal can also be found on BAR's Web site at [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov).